

A CRITICAL ANALYSIS OF THE DEDUCTIBILITY OF EXPENDITURE INCURRED IN VIRTUAL WORLDS FROM A SOUTH AFRICAN INCOME TAX PERSPECTIVE

by

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ENGLISH SUMMARY

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Benjamin Franklin once said that in this world nothing is certain but death and taxes. This seems to be even truer today, as revenue authorities across the world investigate ways in which to tax income earned from virtual worlds. Up until recently no formal guidelines have been issued by these revenue authorities in an attempt to tax this virtual world income. However, several countries, like China, have begun to take steps to collect taxes on real profits realised in transactions involving virtual currency and goods.

The rapid development of virtual worlds has made virtual currency and virtual property big business. Virtual currency from almost every game and social virtual world can be exchanged for real world currency. It is this type of exchanges from virtual currency to real world currency, generally at a profit, that caught the attention of tax authorities. Based on previous research that Lederman and Camp conducted in the United States of America in 2007, certain virtual world income is, in fact, taxable in the hands of the 'player'. Further research conducted by Pienaar in 2008 concluded that certain income from virtual worlds will also be included in the gross income of a South African tax resident.

This study used the conclusions reached by Pienaar in 2008, that certain income earned in virtual worlds are taxable for a South African tax resident, and evaluate whether any

deductions should be allowed against this income. This was achieved by comparing the requirements regarding expenses allowable as a deduction contained in section 11(a) of the South African Income Tax Act, to that of expenditure incurred in generating income in virtual worlds. The study assumed that this income that will be included in gross income is generated by means of trade, and not as a hobby or for recreational purposes.

The study concluded that where income from virtual worlds form part of a resident's gross income, the expenditure incurred in generating this income, by means of a trading activity, qualify for a deduction in terms of the general deduction formula, contained in section 11(a) of the Income Tax Act of South Africa.

AFRIKAANSE OPSOMMING

'N KRITIESE ANALISE OOR DIE AFTREKBAARHEID VAN UITGAWES AANGEGAAN IN DIE VOORTBRENGING VAN VIRTUELE WÊRELD INKOMSTE, VANUIT 'N SUID AFRIKAANSE INKOMSTE BELASTING OOGPUNT

deur

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Benjamin Franklin het op 'n keer gesê dat niks in hierdie wêreld seker is nie, behalwe vir die dood en belasting. Dit is steeds waar as gekyk word na belastingowerhede reg oor die wêreld se aanslag om belasting te hef op inkomste wat verdien word uit virtuele wêrelde. Tot onlangs was daar geen formele riglyne vanaf belasting owerhede oor hoe hierdie inkomste uit virtuele wêrelde belas gaan word nie, maar verskeie lande, soos Sjina, het alreeds stappe begin neem vir die invordering van gerealiseerde winste uit transaksies met virtuele goedere en geldeenhede.

Die spoed waarteen virtuele wêrelde ontwikkel het, het virtuele geld en eiendom 'n winsgewende besigheid gemaak. Virtuele geld vanuit amper enige virtuele speletjie of sosiale virtuele wêreld kan verruil word vir regte wêreldse geld-eenhede. Dit is hierdie verruiling van virtuele geld vir regte geld wat die belastingowerhede se oog gevang het. In navorsing wat deur Lederman en Camp gedoen is in die Verenigde State van Amerika in 2007, is tot die slotsom gekom dat sekere inkomste wat genereer word in virtuele wêrelde wel belasbaar is in die hande van die 'speler'. Verdere navorsing wat gedoen is deur Pienaar in 2008, het tot die slotsom gekom dat sekere inkomste uit virtuele wêrelde ook belasbaar is in die hande van 'n Suid Afrikaanse belastingpligtiges.

Hierdie studie sal die gevolgtrekkings wat deur Pienaar in 2008 bereik is gebruik, naamlik dat seker inkomste uit virtuele wêrelde wel belasbaar is vir 'n Suid-Afrikaanse belastingpligtige, en evalueer of enige aftrekkings toegestaan behoort te word in die voortbrenging van hierdie inkomste. Om tot 'n gevolgtrekking te kom sal die vereistes wat vervat is in artikel 11(a) van die Suid-Afrikaanse inkomste-belastingwet, vergelyk word met die uitgawes wat aangegaan word in die voortbrenging van inkomste uit virtuele wêrelde. Dit word in die studie aanvaar dat die inkomste uit virtuele wêrelde wat deel vorm van bruto inkomste, gegenerereer is by wyse van handelsaktiwiteite.

Die studie sluit af met die gevolgtrekking dat uitgawes wat aangegaan is in die voortbrenging van inkomste uit virtuele wêrelde, wat deel vorm van die bruto inkomste van 'n Suid-Afrikaanse belastingpligtige, aftrekbaar is ingevolge die bepalings van artikel 11(a) van die Suid-Afrikaanse inkomste-belastingwet.

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LIST OF ABBREVIATIONS

MMORPG's	Massively Multiplayer Online Role-Playing Games
NPC's	Non-Player Characters
IWT	In-World Trade/Transactions
RMT	Real Money Trade/Transactions
SARS	South African Revenue Services
SL	Second Life
WoW	World of Warcraft

A CRITICAL ANALYSIS OF THE DEDUCTIBILITY OF EXPENDITURE INCURRED IN VIRTUAL WORLDS FROM A SOUTH AFRICAN INCOME TAX PERSPECTIVE

CHAPTER 1

INTRODUCTION AND PROBLEM STATEMENT

1.1 BACKGROUND

It has long been thought that location is the key to success in many businesses. In modern day business, however, location does not matter as much anymore. Due to so many internet (web) businesses, you can provide remote services no matter where you physically reside or where your company is located. Today, the internet is a virtual world in which many business transactions are concluded. In this virtual world, suppliers and customers conclude agreements without necessarily taking note of physical, legal or national boundaries.

As stated by Lederman (2007:1621), “space was once the ‘final frontier’; today, the newest worlds exist in cyberspace. These ‘virtual worlds’ change, in real time, as computer-rendered characters, or ‘avatars’, move through them. Many offer elaborate and detailed graphics and allow thousands of people worldwide to participate simultaneously, all interacting via the internet with each other and the environment. Some of these worlds, such as City of Heroes, Everquest, and World of Warcraft (WoW), are games that provide structured adventures involving quests, raids, and fights against opposing forces. Others, such as Second Life (SL), The Sims Online, and There, are unscripted virtual environments that lack a set storyline. In SL, for example, the world’s owner, Linden Lab, provides the basic environment, but users create the vast majority of the world’s content” (Lederman, 2007:1621).

Tax experts have long cautioned that profits made through transactions involving virtual currency and goods may be taxable. But until recently, official guidelines have been limited and collection efforts have been almost non-existent. While the United States of America

(USA) has yet to issue any guidelines, several other countries, including China, have begun to take steps to collect taxes on real profits realised in transactions involving virtual currency and/or goods. (Zhang, Tang, Tiano, Gatto, Duranske & Esplin, 2008:1).

The Washington Post (January:2009) recently published an article in which it was stated that the Inland Revenue Services (IRS) in the USA will soon be keeping a closer watch on the thousands, if not millions, of small firms and self-employed enterprises that have sprouted up in virtual worlds. This followed a report published by the taxpayer advocate, Nina Olson, wherein she stated that about \$1 billion in real dollars changed hands in computer-based environments during 2005. Additionally, more than 16 million people are said to have active subscriptions in these worlds, many of which have their own virtual economies and currencies.

China is not the first country to tax profits on the real world sale of virtual property, but it is the first to issue formal guidelines. In 2007, the United Kingdom's HM Revenue and Customs Department said that it was investigating people who were earning profits in social virtual worlds, like SL, and not paying taxes on the profits. Earlier this year, Sweden also declared that it would tax profitable activities in online worlds (Zhang *et al.*, 2008:1).

The rapid development of virtual worlds has made virtual currency and virtual property big business. Virtual currency from almost every game and social virtual world can be exchanged for real world currency.

An extensive search on various electronic journal databases suggest that no academic research has considered whether expenditure incurred to produce taxable virtual world income will qualify as a deduction in terms of the general deduction formula contained in section 11(a) of the South African Income Tax Act 58 of 1962. This study will use the conclusions reached by Pienaar in 2008 that certain income earned in virtual worlds are taxable for a South African tax resident, and evaluate whether any deductions should be allowed against this income. This will be achieved by comparing the requirements contained in section 11(a) of the Income Tax Act to that of expenditure incurred in generating income in virtual worlds.

1.2 PROBLEM STATEMENT

The internet creates entirely new ways of conducting international business. The tax uncertainties and problems it creates are equally new. Economic activities in virtual worlds may present an emerging area of tax non-compliance, partly as a result of a lack of guidance by revenue authorities across the world. Currently, there is no research in South Africa pertaining to the deductibility of expenditure in terms of section 11(a) of the South African Income Tax Act, should virtual income be taxable, as concluded by Pienaar's study in 2008 "South African Income Tax Implication Of Income Earned In Virtual Worlds".

1.3 PURPOSE STATEMENT

This study will accept the conclusion(s) reached by Pienaar (2008:46) that virtual world income will form part of a South African resident's gross income. The study will evaluate and compare the requirements contained in section 11(a) of the South African Income Tax Act, to that of expenditure incurred in generating income in virtual worlds. The study will assume that this income that will be included in gross income is generated by means of trade, and not as a hobby or for recreational purposes. Furthermore, this study will exclude income earned that might be disqualified from gross income on the basis that the income is capital in nature.

From an academic perspective, this study will contribute to the current tax knowledge by applying the requirements contained in section 11(a) of the South African Income Tax Act to expenditure incurred to produce taxable virtual world income and determining whether these expenditures incurred in producing these taxable virtual income will qualify as a tax deduction in terms of the said section of the Income Tax Act.

1.4 RESEARCH OBJECTIVES

The research objectives of this study are:

- to compare the requirements contained in section 11(a) of the South African Income Tax Act to that of expenditure incurred in generating income in virtual worlds; and

- to critically analyse expenditure incurred in virtual worlds in order to determine if the expenditure will be deductible for income tax in South Africa.

A research design may be described as a “... strategic plan for a research project ... setting out the broad outline and key features of the work to be undertaken, including the methods of data collection and analysis to be employed, and showing how the research strategy addresses the specific aims and objectives of the study, and whether the research issues are theoretical [i.e., basic/pure] or policy-directed [i.e., applied] ...” (Marshall, 1998:566).

A conceptual analysis was chosen as a strategy of inquiry. The conceptual analysis will evaluate and analyse existing literature that is available with regards to virtual world income and the tax consequences thereof. The existing literature on the topic will be applied to South African legislation to determine whether expenditure incurred to generate taxable virtual world income, will in fact be deductible from taxable income in terms of section 11(a) of the South African Income Tax Act.

The initial phases will explain how virtual worlds work and the main differences in structured virtual worlds, in comparison to those of unstructured virtual worlds. Furthermore, the requirements that have to be met before expenditure from trading activities can be deducted, in terms of section 11(a) of the South African Income Tax Act, will be analysed and applied to expenditure incurred in virtual worlds.

The conclusions of the study could assist the South African Revenue Services (SARS) to identify gaps in the South African tax legislation pertaining to virtual world taxation. It will also create certainty for taxpayers when considering the allowable deductions in terms of the general deduction formula contained in section 11(a) of the South African Income Tax Act, pertaining to the expenditure incurred in virtual worlds.

1.5 IMPORTANCE AND BENEFITS OF THE STUDY

From an academic perspective, this study will contribute to the application of section 11(a) of the South African Income Tax Act requirements and to determining whether certain expenditure incurred in producing taxable virtual income will qualify as a tax deduction. The study will then compare the requirements contained in section 11(a) of the South African Income Tax Act to that of expenditure incurred in generating income in virtual worlds in order to conclude whether these expenditures are tax deductible for a South African tax resident.

The study will look at the workings of structured virtual worlds and unstructured virtual worlds, and the types of transactions that occur in these virtual worlds. Furthermore, the study will highlight the findings in previous research pertaining to the inclusion of virtual world income, in the gross income of a South African resident. Expenditure incurred in virtual worlds will be critically analysed against the requirements to deduct expenditure in terms of section 11(a) of the South African Income Tax Act.

1.6 DELINEATIONS AND ASSUMPTIONS

1.6.1 Limitations

The study will not consider the capital gains tax consequences of income earned in virtual worlds.

The study will not consider the detailed circumstances that will cause a taxpayer's actions within a virtual world to be considered a trade rather than a hobby.

The study will not consider the effects of any double taxation agreements or any other international tax rules.

Additionally, the study will not consider any Value-added tax (VAT) consequences that may arise from transacting in virtual worlds.

1.6.2 Assumptions

The study will assume that income earned from virtual worlds that form part of a South African resident's gross income, will be earned by means of trade or trading activities, rather than a hobby.

1.7 DEFINITIONS

The following definitions are used in this study:

Virtual worlds:

Virtual worlds for the purpose of this study is defined as "...role playing games taking advantage of the internet's ability to create graphic representation of reality also know as Massively Multiplayer Online Role-playing Games (MMORPGs) (Pienaar, 2008). Role-playing games fall along a continuum from highly structured games to highly unstructured games" (Camp, 2007).

Structured virtual worlds:

"A structured virtual world presents its players with pre-set roles and pre-set challenges and objectives. World of Warcraft (WoW) is an example of a highly structured role-playing game" (Camp, 2007).

Unstructured virtual worlds:

Unstructured virtual worlds are defined as "...environments where the owner of the world provides a basic environment and users create most of the in-world content. Examples of such unstructured worlds are Second life, The Sims Online and There" (Pienaar, 2008).

South African Resident:

A South African resident is defined "...in relation to a natural person as either a person ordinarily resident in South Africa, or a person who meets the requirements of the 'physically present' test (paragraph (a) of the definition of a resident in section 1 of the South African Income Tax Act)".

General deduction formula:

The general deduction formula is defined in section 11, specifically section 11(a), of the South African Income Tax Act and reads as follows: “General deductions allowed in determination of taxable income. For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived:

- expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature”.

Gold farmers:

Gold farmers are individuals who spend a significant time playing online games to develop more powerful avatars and accumulate virtual currency and other assets, and offer them for sale.

Loot drops:

Loot drops are a form of in-world trade (in-world transaction). In structured games, such as WoW, all characters need virtual items, such as swords, potions, guns and spells, in order to play and advance in levels.

1.8 BRIEF OVERVIEW OF CHAPTERS

In chapter 2, the workings of structured and unstructured virtual worlds are explained. These explanations are based on research conducted in the USA by Lederman and Camp. They concluded as to why (and when) virtual world income should be taxed in the USA. Pienaar furthered this research in 2008, and applied the principles contained in the gross income definition of the South African Income Tax Act to the income earned in virtual worlds. The conclusions of her study indicated that this virtual world income will in some instances be included in the gross income of a South African tax resident.

In chapter 3, this study highlights the requirements contained in section 11(a) of the South African Income Tax Act and explains these requirements in detail. The expenses incurred

to produce virtual world income is then compared to the requirements of the general deduction formula.

Chapter 4 concludes the findings from chapters 2 and 3 of this study.

CHAPTER 2:

UNDERSTANDING HOW STRUCTURED AND UNSTRUCTURED VIRTUAL WORLDS WORK AND WHY INCOME FROM THESE WORLDS COULD FORM PART OF GROSS INCOME

2.1 INTRODUCTION

Virtual currency from almost every game and social virtual world can be exchanged for real world currency. In some games and virtual worlds, the exchange of virtual currency takes place via provider-approved channels. For those games and worlds where the provider does not authorise 'real money trade', internet-based third party markets abound and are thriving. In other cases, virtual currency can be redeemed for real-world goods or services. For example, pizza.net provides a service in SL that enables a user to enter a virtual pizza store and order real pizza for real-world delivery using the virtual currency of SL (Linden Dollars). Worldwide, the market for transactions involving and the exchange of real-world currency and/or goods are estimated at more than US \$2 billion per year and growing (Zhang *et al.*, 2008:2).

Profits from these transactions are realised in a variety of ways. For example, profits can result from running in-world businesses that provide virtual goods or services to customers, 'gold farming', speculation in virtual land and sales of advanced game characters. Many online game players buy virtual currency and other virtual world assets, such as weapons, virtual buildings and/or game resources, from professional gold farmers.

Gold farmers are individuals who spend a significant time playing online games to develop more powerful avatars and accumulate virtual currency and other assets and offer them for sale. Other players buy entire user accounts that come with game characters that have already been 'levelled up' (characters that possess advanced skills and/or powers) through time consuming game play by gold farmers. In this way, the purchasing player can gain immediate access to content and a playing experience that is only available via a character that has reached a certain level of power and/or achievement, which requires a

significant investment of time. Other users, particularly users of social virtual worlds, create and sell virtual goods, like clothing, cars and houses, provide services to other users and speculate in or lease virtual real estate, among other things. (Zhang *et al.*, 2008:2).

The meaning of structured virtual worlds or game worlds, and the workings of these 'worlds' in the virtual paradigm will now be explained. The explanation of the workings of a structured virtual world will be based on previous research conducted in the USA on virtual worlds. Furthermore, the types of transactions that occur in a structured virtual world will be discussed, as well as the reasons why such transactions are entered into.

The study will then look at the conclusions of previous research pertaining to the taxability of virtual world income in the USA, as well as the conclusions formed by Pienaar (2008) relating to virtual world income that form part of the gross income of a tax resident of South Africa.

2.2 HOW DO 'GAME WORLDS' OR STRUCTURED VIRTUAL WORLDS WORK?

The population of virtual worlds is vast, numbering in the millions. Virtual worlds, particularly unscripted worlds such as SL, provide a platform for all sorts of real world activity, and numerous real world companies are using it to promote their products. For example, in early 2007 Mazda debuted the Hakaze, a concept car in SL, prior to its real world debut (Lederman, 2007:1622).

As explained by Lederman (2007:1628) game worlds are typically about the experience of advancing and completing various objectives that comprise the 'hero's journey'. Such a journey requires a character to obtain certain items, such as weapons and protective armour, in order to succeed and attain higher levels as the content becomes progressively more challenging.

In a 'game world' or structured virtual world, the roles, objective and challenges are pre-set and players agree to obey and play by these rules in return for the benefits of playing the game (Bartle, 2004:23).

According to Camp (2007:4-6), structured worlds typically have three prominent characteristics, namely:

- all characters are highly structured and have strong pre-defined roles within the context of an overall storyline. You cannot mix and match. Each role brings with it pre-programmed strengths and weaknesses. Players engage in quests to find treasure, and to slay monsters and dragons. For each mission accomplished, the game developers reward players with greater skills, weapons, talents and game treasure;
- the range of virtual items that can be acquired is heavily controlled by the game developers who create the items and their characteristics. In most structured games, one acquires virtual items in one of two ways:
 - one picks them up either by finding them in a sort of treasure hunt, or by earning them after completing a quest; or
 - one can make them by using a pre-set 'recipe' where one's character must gather the ingredients (or buy them from another player or NPC) and then assemble them. This is commonly called 'crafting'. The crafting, however, does not create anything that has not been thought of and incorporated into the game by the designers; and
- structured games typically involve 'leveling'. The game developers assign skill points to characters based on the characters' activities. The more you kill, for example, the better you get at it in that the computer assigns you better odds of success in battle.

2.1.1 Why trade in structured virtual worlds?

The heart of economic activity in both structured and non-structured games is trade. Both structured and unstructured MMORPG's facilitate game play through the use of on-line mediums of exchange. In WoW, the top unit of in-world currency is called Gold and is broken down into subunits called Silver and Copper. Players create wealth through two types of activity: in-world and real-world. First, players create wealth by trades conducted

wholly within the game environment. In-world transactions (IWT) might take the form of swapping virtual items for other virtual items, swapping virtual items for in-world currency, or swapping in-world services for in-world currency. Second, players engage in what is typically called real money trading (RMT), whereby they sell either individual virtual items or entire player accounts for real-world currency on websites like eBay (Camp, 2007:9).

Low-value items can often be found by exploring the environment, but higher value 'loot' is typically earned by killing a computer-generated character, such as a monster, which then drops its loot (Lederman, 2007:1628). Lederman further explains why players would rather purchase items in contrast to earning them by means of conquering the challenges set by the game. Lederman concludes by saying that players purchase items mainly because of the large time cost that earning them entails (Lederman, 2007:1628).

Virtual transactions have real economic value because of real market trade (RMT). Although game developers give periodic 'allowances' of in-world currency to paid subscribers, it is not nearly enough if one wants to play much. Furthermore, if a WoW avatar does not complete quests or trade, it will never acquire the gold necessary to level up. Similarly, if one needs a particular virtual item, such as a special herb or sword, one might find it cheaper to buy it with real US dollars on an RMT exchange site, than to find the time to harvest the necessary gold. The RMT market for virtual items is robust. The president of one third-party auction site estimated that over \$880 million had passed through that site during its 2004 operating year (Camp, 2007:12).

2.1.2 Does virtual world income from a structured world form part of a South African resident's gross income?

As indicated by Pienaar (2008:30), even though people's general perception and intuition tend to assume that income received from structured or game worlds will not be taxable because it is merely a game, the research indicated that it might not necessarily be the case if South African tax legislation is applied.

2.1.2.1 Loot drops

Loot drops are a form of in-world trade (in-world transaction). In structured games, such as WoW, all characters need virtual items, such as swords, potions, guns and spells, in order to play and advance levels. These virtual items are crafted by those characters in the production professions, such as blacksmiths, alchemists, engineers and mages. To make these items requires a recipe and ingredients. NPC's provide recipes (more complex ones to higher level professionals) and the gathering professions provide the ingredients. The game environment thus creates a market between those who gather and those who produce (Camp, 2007:9). For example, if one is a blacksmith and needs a series of ingredients to make a special sword, one might acquire some of the ingredients oneself if one is also a gatherer, such as a miner. But the recipes are structured to encourage trade between players. Further, "some players choose to select only 'gathering' professions, opting to supply resources to players with item creation skills. These players will typically offer gathered items for sale in the game's auction houses" (Camp, 2007:10).

With regards to loot drops, previous research did not agree on the basis why loot drops should not be taxable, but these studies did agree that loot drops should not be taxed unless a cash out transaction takes place (Pienaar, 2008:30). According to South African income tax legislation, loot drops appear to qualify as gross income, as it qualifies as an "amount received or accrued in cash or otherwise" as required by the definition of gross income.

South African taxpayers have a smaller risk with regards to the classification of loot drops as prizes and awards. Where a prize or lottery depends on good fortune and the transaction is not of a business nature, the transaction will be of a capital nature for South African income tax purposes and will not qualify as gross income (Pienaar, 2008:20).

2.1.2.2 In-world transactions

Previous research concluded that in-world transactions should not be taxable until a cash-out transaction takes place. Here, the South African income tax principles also appear to disagree with USA principles. However, each individual transaction will determine whether

the exchange is of a revenue or capital nature, which will indicate whether the amount will be included in gross income. If the transactions taking place are merely 'play', the exchange will be classified to be of a capital nature and therefore not included in gross income. If the player is, however, busy with a scheme of profit making, and 'systematic' and regular trade is taking place, the chances are very good that the amount will be included in gross income (Pienaar, 2008:28).

2.1.2.3 Real money trade

Virtual transactions have real economic value because of RMT. Although SL game developers give periodic 'allowances' of in-world currency to paid subscribers, it is not nearly enough if one wants to play much. And if your WoW avatar does not complete quests or trade, it will never acquire the gold necessary to level up. Thus, if one's friends are playing WoW with Level 41 characters (who are entitled to upgraded modes of transportation), one cannot keep up very well with a Level 1 character. So one might want to buy a ready-made Level 41 character rather than take the considerable game-time to level up a new character to match the others. One might also purchase a program that will make a character perform the basic repetitive tasks that increase skill points. Similarly, if one needs a particular virtual item, such as a special herb or sword, one might find it cheaper to buy it with real US dollars on an RMT exchange site than to find the time to harvest the necessary gold (Camp, 2007:12).

All completed research agrees that RMT's give real economic value to virtual worlds and are the reason why income from virtual worlds would attract the attention of tax authorities. According to Camp (2007:45), when a WoW or SL player receives US dollars for selling either a player account or an in-world item on an auction site, the sale produces gross income, regardless of who wins the current legal battles over who has what property rights in virtual items used in-world.

RMT's are the only type of transactions where both USA and South African income tax includes any form of transaction which involves RMT in gross income (Pienaar, 2008:30).

2.2 UNSTRUCTURED VIRTUAL WORLDS

2.2.1 How do unstructured virtual worlds work?

Like game worlds, unscripted worlds offer participants an implicit or explicit choice to invest either time or money in equipping their avatars. Although worlds without set storylines typically do not provide participants with particular goals, they allow users to engage in online activities, such as chatting with friends, attending a concert or going to a nightclub. Acquisitions can include such things as virtual residences, virtual wardrobes and virtual cars. Providing a rich realm and desirable trappings for one's avatar can both be fun and increase the participant's status within the virtual world (Lederman, 2007:1630).

SL is an example of an unstructured role-playing game. Launched in 2003, it had approximately eight million 'residents' as of July 17, 2007. Like WoW, players participate in SL through an online character, or avatar. While avatars are limited in their basic form (players can choose human or a variety of non-human forms), players have enormous ability to modify their avatar's appearance. More importantly, SL avatars have few pre-set characteristics or skills and the skills they do have (such as flying) do not improve automatically with repetition. In addition, avatars do not have structured roles. There are no quests or missions. There are few NPCs. The game developers do not attempt to define the game environment except by providing virtual landscapes and the means by which to create almost any virtual item imaginable through a basic computer script available to every player (Camp, 2007:7).

Some worlds, such as SL, intentionally provide for commerce. SL has garnered particular attention, in part because its Terms of Service Agreement expressly state that participants retain any intellectual property rights they may have in their creations. Allowing participants to retain their intellectual property rights encourages creativity and entrepreneurial activity. SL also permits and facilitates exchanges of its currency, Linden dollars (Lindens), for US dollars. SL is thus an intentionally commodified world (Lederman, 2007:1630).

2.2.2 Why trade in unstructured virtual worlds?

Generally, publishers of unscripted worlds have less desire for restrictions on virtual property than publishers of game worlds do, because unscripted worlds do not hinge on a hero's journey. As Professor Bartle has argued, what is acceptable in a virtual world for which the designers have opted out of supporting the hero's journey is not necessarily acceptable in one for which they have not. More specifically, in unscripted worlds owners do not need the level of control required to regulate a character's advancement in a structured story or to maintain balance in a game. Accordingly, while permitting real money purchases of items in game worlds may threaten the game concept, while doing so in an unscripted world does not. It is precisely because such worlds lack the structure and storyline of game worlds that real world trade can enhance the experience. Thus, unscripted worlds may actually seek to foster RMT (Lederman, 2007:1639-1640).

While social interaction is important to structured games, it is vital to non-structured games. The whole point of the game is interaction: players spend their time interacting with other players. The interaction can be social or economic, cooperative or competitive. Precisely because an estimated 99 percent of SL content is user-generated, the main activity for many players, or 'residents' as they are often called, is to visit different parts of the SL world and play or trade in them (Camp, 2007:7-8).

Players also engage competitively by, for example, trying to sell items in market competition, trying to outdo others in social status competitions, or by playing games or by fighting in player-versus-player combat in the areas so designated. In sum, players have fun trying on various personas, body parts or clothes, seeing different sights and meeting other people for games, chatting, fighting or trading. As with structured games, it is this last activity, i.e., trade, which creates the engine of the in-world economy (Camp, 2007:8).

2.2.3 Does virtual world income from an unstructured world form part of a South African resident's gross income?

Unlike structured worlds, an unstructured world like SL does not involve loot drops (Lederman, 2007:1669). The in-world transactions are therefore limited to trade amongst residents, being virtual item for virtual item, or virtual item for in-world currency (Pienaar, 2008:36).

To a large extent, the South African tax consequence for income earned in unstructured virtual worlds agree with the findings of the research based on USA legislation, performed by Lederman (2007). Whether a transaction took place in-world and the in-world income were never cashed out, or whether the virtual item was sold for real money, both transactions would result in the income generated being included in gross income, as defined in section 1 of the South African Income Tax Act (Pienaar, 2008:42).

However, should a taxpayer become a resident of one of these unstructured virtual worlds and the only reason for trade is the entertainment of the taxpayer, income might be of a capital nature, as per the South African gross income definition in section 1 of the South African Income Tax Act, and not included in gross income. Every transaction will be evaluated on its own merit, especially because the nature of unstructured virtual worlds tends to favour trade rather than play (Pienaar, 2008:42).

2.3 CONCLUSION

In this chapter research conducted in the USA as well as research conducted in South Africa were discussed. The research focused on the workings of structured and unstructured virtual worlds, and considered the tax implications of income from these worlds, both in the USA and in South Africa. The research by Pienaar (2008) concluded that income from virtual worlds will, in some instances, form part of the gross income as defined in section 1 of the South African Income Tax Act, of a South African tax resident.

The next chapter will critically analyse and compare the expenditure incurred in virtual world to tax deductible expenditure contained in section 11(a) of the South African Income Tax Act.

CHAPTER 3

A CRITICAL ANALYSIS OF EXPENDITURE INCURRED IN VIRTUAL WORLDS TO DETERMINE IF THESE EXPENDITURE WILL BE DEDUCTABLE FOR INCOME TAX IN SOUTH AFRICA

3.1 INTRODUCTION

The literature review that follows explains the requirements contained in section 11(a) of the South African Income Tax Act when a taxpayer seeks to deduct expenditure incurred in producing income. The preamble to section 11 of the South African Income Tax Act is the trade requirement which is discussed and explained. Several court cases are highlighted to further clarify the requirements of section 11(a) of the South African Income Tax Act. The court cases contain principles laid down by the courts in deciding on grey areas when taxpayers seek deductions.

Section 11 and section 11(a) of the South African Income Tax Act read as follows:

“General deductions allowed in determination of taxable income. For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall be allowed as deductions from the income of such person so derived

(a) expenditure and losses actually incurred in the production of the income, provided such expenditure and losses are not of a capital nature”.

3.2 THE TRADE REQUIREMENT

The preamble to section 11 of the South African Income Tax Act requires that before a taxpayer may claim a deduction from income in terms of section 11(a), he/she must be carrying on a trade. Section 23(g) of the South African Income Tax Act furthermore prohibits the deduction of any money to the extent that it is not laid out for purposes of trade. Section 1 of the South African Income Tax Act widely define trade as including every profession, trade, business, employment, calling, occupation or venture, and the

definition is not considered to be exhaustive, as concluded in *Burgess v CIR* 1993(4) SA 161(A).

The purpose for which the expenditure is incurred, is decisive and the enquiry will necessarily be one of fact (*CIR v Nemojim (Pty) Ltd* 1983(4) SA 935(A). It has been held that the test to determine compliance with this requirement rests on whether there is a real hope to make a profit. Such hope must not be based on fanciful expectations, but on reasonable possibility (*ITC 1292* (41 SATC 163)).

This statement was placed in perspective by subsequent decisions, which held that the possibility or otherwise of earning a profit is simply a factor, perhaps the most important factor and perhaps, in the absence of anything else, a decisive factor in considering whether or not the requirement of section 23(g) of the South African Income Tax Act has been met (*ITC 1404* (48 SATC 1); *ITC 1385* (46 SATC 111)).

It consequently does not mean that the absence of a profit will necessarily exclude the transaction from the ambit of the taxpayer's trade. As long as it is so connected to the taxpayer's trade (where it is disbursed on grounds of commercial expediency or to indirectly facilitate the taxpayer's trade) it may be concluded that the money paid was expended for purposes of trade (*CIR v De Beers Holdings (Pty) Ltd* 1986(1) SA 8(A); Sigwadi & Van der Merwe, 2004:68-69).

Once the trade requirement has been met, the specific criteria for the section 11 deductions in the South African Income Tax Act apply. These criteria, which are contained in section 11(a) of the South African Income Tax Act, are that a deduction is permitted in respect of expenditure or losses, actually incurred, during the year of assessment, in the production of income, and are not of a capital nature. Each of these requirements will now be considered and analysed separately.

3.3 EXPENDITURE OR LOSSES

Both expenses and losses qualify for a deduction, and on the face of it there is little distinction between the two. However, there are some subtle differences. An expense arises from a conscious decision to pay out an amount in the course of someone's trade. An example would be a bakery that has to purchase flour with which to bake bread. A loss, on the other hand, is an unexpected, involuntary event that has negative financial consequences.

It is submitted that the word 'expenditure' is not restricted to an outlay of cash, but includes outlays of amounts in forms other than cash. For example, if a merchant was required to pay for his goods by tendering land or shares in a company, the value of the land or shares would constitute expenditure in terms of section 11(a) of the South African Income Tax Act and would be deductible (Jordaan, Koekemoer, Stiglingh, Van Schalkwyk & Wasserman, 2007:87).

3.4 ACTUALLY INCURRED

Jordaan *et al.* (2007:87) state that the requirement is 'actually incurred' and not 'necessarily incurred'. This widens the field of deductible expenditure, even bringing extravagant and inefficient expenditure into the deductibility net, as confirmed in the *Port Elizabeth Electric Tramway Co Ltd v CIR* 1936 CPD (8 SATC 13).

Incurred does also not necessarily mean paid. Once an unconditional liability exists at year end, even though unpaid, such expenditure would be deductible, as it meets the requirement of actually incurred.

A supermarket that has a power failure would, therefore, sustain actually incurred losses, even though physical payment only takes place at a later date. It is, however, not necessary for the taxpayer to prove that the expense was necessarily incurred. It is not the role of SARS to determine whether the expense was prudent or otherwise. While it may not, for example, be necessary for a security gate manufacturer to put two coats of paint

on their products instead of one, the fact is that it would have incurred expenses relating to the extra coat of paint and they would therefore be entitled to claim the deduction.

3.5 DURING THE YEAR OF ASSESSMENT

Over the years the courts have held that any expense that is incurred by a taxpayer must be claimed in the tax year during which it is incurred. While it makes sense to do so, there are circumstances where such expenses are not claimed timely. The late submission of employee expense claims is often a cause for such expenditure being recorded in a later year. However, given that SARS allows around 10 months after the end of the tax year for individuals to submit their returns, and 12 months in the case of corporate taxpayers, it is not unreasonable to expect such expenditures to be claimed in the tax year in which they are incurred.

The principle established in *Caltex Oil (SA) Limited v SIR* 1975(1) SA 665(A) (37 SATC 1) is that expenditure incurred during the year of assessment must be quantified and accounted for at the end of that year for the purpose of section 11(a) of the South African Income Tax Act (Jordaan *et al.* 2007:89).

3.6 IN THE PRODUCTION OF THE INCOME

This is probably the most onerous requirement, since it is not just any expenditure that qualifies for a deduction, but only that expenditure that has been incurred for the purpose of producing income. However, adding to the complication is that there is often not a direct connection between the incurring of expenses and the production of a particular stream of income. For that matter, there are very little (if any) expenses that directly produce income. Even goods purchased for resale do not produce any income unless they are actually sold. What then about indirect expenses, such as factory rentals, salaries and wages, and utilities, such as electricity and water?

Fortunately, it has become established practice that in order to qualify for a deduction, an expense need not directly produce income. As long as such expense has been incurred

for the purpose or with the intention of deriving income, such expense will usually qualify for a deduction. This means that salaries and wages, for example, will qualify for a deduction, provided that the activities of the employees engaged will ultimately result in some or other income being produced.

But what about indirect expenditure that does not bear a direct relationship to the income-generating activities of the business? Items that come to mind in this criterion include bank charges, auditing and accounting fees, printing and stationery, and salaries paid to administrative staff. While these expenses do not directly produce income, they form part of the income-earning structure and it has become accepted practice to allow such expenses as a deduction. When such an expense comes before the courts to decide, they normally look at the underlying facts, asking the following two questions:

- is there an act that can be identified as having been performed for the purpose of producing income; and
- is the expense that the taxpayer seeks to deduct sufficiently closely linked to the performance of such act?

In the *Port Elizabeth Electric Tramway Co Ltd v CIR* 1936 CPD (8 SATC 13) court case, the action identified was that of carrying passengers on trams for reward and for which the employment of drivers was a critical component. Once this act was identified as being in the production of income, all that was left for the court to decide was whether the payment of compensation to relatives of a deceased employee was closely connected enough to that act. In this case, the court held that there was such a connection and ordered that the expense be allowed as a deduction.

3.7 NOT OF A CAPITAL NATURE

The final requirement that needs to be satisfied is that the expense must not be of a capital nature. There are probably more court cases attempting to solve the capital versus revenue conundrum than any other. It is therefore clear that each individual case must be judged on its own merits. There are, however, a few general principles that will guide taxpayers in determining whether an expense is of a capital or revenue nature, namely:

- is the expense part of an income-making activity; or
- does it form part of the income generating structure?

Jordaan *et al.* (2007:90) explain that a distinction should be made between the expenditure incurred in performing the income earning operations and the expenditure incurred in establishing, improving or adding to the income earning plant or machinery. The first being revenue in nature and the latter being capital in nature.

An example would be that of a motor car. For a taxpayer that deals in the buying and selling of cars for profit, such as a motor dealer, expenses incurred in buying cars for resale would be of a revenue nature and would thus be deductible. However, if a pharmaceutical company purchases the same car, to be used by its sales representative, such car would be part of their income-earning structure, and the expense would therefore be of a capital nature and would thus not be deductible.

A question that is often asked is whether the expense gives rise to an enduring benefit, and if so, does this necessarily imply that the expense is capital in nature? The fact that an asset will endure for a very short period will support a view that a payment for that asset or right is of a revenue nature and may therefore qualify for a deduction in terms of section 11(a) of the South African Income Tax Act. On the other hand, when a right is acquired for a substantial period, it constitutes an enduring benefit and will therefore not qualify for the section 11(a) of the South African Income Tax Act deduction (Jordaan *et al.* 2007:91).

An example of expenditure giving rise to such a benefit would be the cost of moving and erecting a machine, connecting it to the power supply and preparing it for first use. For accounting purposes, such expenditure will be capitalised together with the cost of the asset, and the tax treatment follows the same practice.

Another commonly asked question is whether the expense is bringing about an improvement to one's income earning structure, or merely restoring it to its original condition?

This is the old 'repair vs. improvement' argument, which can be answered as follows: If the expense directly and significantly enhances the market value of the asset, it is of a capital nature, whereas if it is merely restoring the asset to its former state and any enhancement to its market value is incidental, the expense will be of a revenue nature and allowable as a deduction.

As can be seen, the question of whether an expense is of a capital or revenue nature is a rather grey area, and for this reason SARS usually asks for additional information where there may be an element of doubt, particularly when it comes to repairs and maintenance, where many a taxpayer has tried to write off an improvement, thereby claiming it for tax purposes.

3.8 COMPARING VIRTUAL WORLD EXPENDITURE TO THE REQUIREMENTS CONTAINED IN SECTION 11(a) OF THE SOUTH AFRICAN INCOME TAX ACT

3.8.1 Loot drops

Pienaar (2008:20) conclude that even though loot drops would qualify as an amount received or accrued as per the definition of gross income, loot drops will most probably be similar to a prize or lottery winnings, based on good fortune. Income generated by way of 'good fortune' would in this instance be regarded as being capital in nature and would consequently not be taxable in South Africa. Due to the fact that no gross income was generated by means of a trade, the expenditure incurred would not be deductible in terms of section 11(a) of the South African Income Tax Act.

3.8.2 In-world transactions

According to Pienaar (2008:28), if in-world transactions take place and the exchange of goods or items are merely a consequence of the game (play), the income generated from this exchange will also not form part of gross income, but will be considered to be of a capital nature. If the player is, however, busy with a scheme of profit making and

systematic and regular trade is taking place, the chances are very good that the amount will be included in gross income (Pienaar, 2008:28).

IWT plays a more important role in unstructured games. For games like SL to attract and retain players, player-to-player transactions are essential. The open-ended scripting language made available to all players by the game creators allows any player to create any object imaginable. Those players who have the time, talent and inclination can use SL's powerful scripting language to create virtual objects that are fun to see or use. Since production costs are negligible, players can sell copies of their work to other gamers who are willing to substitute L\$ for time and talent. Other gamers sell services (Camp, 2007:11).

It is not surprising to find the world's oldest profession flourishing in SL. In SL, players can 'own' virtual land within the game context. SL sells land in blocks, starting at 512 virtual square meters. As implied by the designated size, the creation of each increment of virtual land and representation of what can now occur on that virtual land requires some corresponding increment of processing power and so landowners not only pay a subscriber fee, they also pay a 'property tax' (called a 'land use fee'). Some players act as virtual real estate developers, buying land and then, after making landscaping or other improvements, subdividing it and re-selling or renting it out. Although owned within the game context, it is not clear whether real world property rights attach to virtual land. It is also not clear what real world property rights, if any, attach to virtual items in SL (Camp, 2007:11-12).

As stated by Pienaar (2008:28), income generated as part of a scheme of profit making in a systematic and regular basis, will constitute a trading activity and, consequently, income generated from these trading activities will constitute gross income for a South African resident. An example of such an activity that would qualify as a scheme of profit making and a trading activity in SL is land development. Camp states that land development is a highly profitable trade in SL. For the land developer in SL, this land comes at a price similar to a property tax. The unanswered question is whether this property tax in a virtual world, as well as other virtual expenditure incurred to produce virtual income and

consequently gross income, would qualify as a deduction for South African income tax purposes, in terms of section 11(a) of the Income Tax Act?

We will now subject these virtual expenditures to the requirements contained in section 11(a) of the South African Income Tax Act, as described and explained in the first part of chapter 3.

The requirements contained in section 11(a) of the South African Income Tax Act are:

- expenditure or losses;
- actually incurred;
- during the year of assessment;
- in the production of income; and
- not of a capital nature.

3.8.2.1 Expenditure and losses

As previously stated, both expenses and losses qualify for a deduction as long as the expenditure or loss was incurred in the course of someone's trade. If a land developer in SL has the intention of developing land and sell it off to other SL avatars in a scheme of profit making, any expenditure or losses incurred during this development phase should qualify as an expense for section 11(a) of the South African Income Tax Act. Property taxes, ground works and building costs are some examples of a land developer's expenses. The first requirement is thus met.

3.8.2.2 Actually incurred

The second requirement is that the expenditures or losses must be actually incurred. This requirement is perhaps the most difficult to meet, seeing that these expenditures are incurred in a virtual world. For an expense to be actually incurred an unconditional liability must exist, no matter how extravagant the expense might be.

For a SL land developer, an expense like property taxes or building costs will have to be actually incurred in the virtual world to develop this piece of land into something that can be sold at a profit. Based on the fact that income generated in a virtual world could constitute gross income once cashed out, the same principle should be applied to expenditure incurred in a virtual world. This would result in taxable income being taxed in the hands of a South African resident, in contrast to gross income being taxed, should virtual expenditure not be considered to be actually incurred.

3.8.2.3 During the year of assessment

The principle laid down by the courts (in the Caltex oil case) for this requirement should also be applied to virtual world expenditure. As mentioned previously and confirmed by the courts in the Caltex oil case, expenditure incurred should be accounted for and claimed in the correct year of assessment.

3.8.2.4 In the production of income

As it is not just any expenditure that qualifies for a deduction, but only that expenditure that has been incurred for the purpose of producing income, the land developer in SL will also have to prove that his/her expenditure was incurred to produce income. There need not be a direct link between the expense and the income produced, but the land developer of SL must have the intention of producing income when any expenditure is incurred. A SL land developer that starts incurring building costs should be able to prove that these building costs were incurred to produce a sale or income, and not incurred for his/her private use with no intention of producing income.

3.8.2.5 Not of a capital nature

The same principle that is applied by the courts should be applied when determining if any expenditure incurred is of a capital or revenue nature. For a SL land developer, the building cost will not be considered to be of a capital nature if the intention is to sell the developed land. If, however, the land developer intends to build an office block, for example, with no intention to sell the office block but rather to rent it out to virtual

businesses, the building cost will be of a capital nature and will not qualify for a deduction in terms of section 11(a) of the South African Income Tax Act.

3.9 CONCLUSION

This chapter examined the requirements contained in section 11(a) of the South African Income Tax Act in detail. Furthermore, this chapter critically evaluated the most common expenditures incurred in generating this income, and compared them to the requirement contained in section 11(a) of the South African Income Tax Act. This was done in order to conclude whether expenditure incurred to generate income from virtual worlds will qualify as a tax deduction in terms of section 11(a) of the South African Income Tax Act. The preamble is that the income generated from virtual worlds constitutes a trade, and is not merely a hobby or entertainment.

Chapter 4

CONCLUSION

4.1 INTRODUCTION

The purpose of this study was to determine whether expenditures incurred to produce taxable income from trade in virtual worlds, will be deductible in terms of the general deduction formula. In chapter 2, the study explained how structured and unstructured virtual worlds work, as well as why players trade in these virtual worlds and when these trading activities will become taxable benefits. Chapter 3 then analysed the requirements for a tax deduction in terms of section 11(a) of the South African Income Tax Act and compared these requirements to expenditures incurred in generating virtual world income.

4.2 SUMMARY OF FINDINGS

4.2.1 Purpose statement

The study evaluated and compared the requirements contained in section 11(a) of the South African Income Tax Act to that of expenditures incurred in generating income in virtual worlds.

4.2.2 Research objectives

The research objectives were:

- to compare the requirements contained in section 11(a) of the South African Income Tax Act to that of expenditure incurred in generating income in virtual worlds; and
- to critically analyse expenditure incurred in virtual worlds in order to determine if the expenditure will be deductible for income tax in South Africa.

Research done both in the USA as well as in South Africa found that certain trading activities taking place in virtual worlds will be taxable in the real world. Revenue authorities

across the world are investing a lot of time to set up policies and guidelines on how and when this virtual income will be taxed.

Once this income is taxed as income from a trading activity, revenue authorities can surely not deny taxpayers their right to claim deductions, specifically the general deductions contained in section 11(a) of the South African Income Tax Act, against this virtual world income. Chapter 3 of this study looked at the requirements contained in section 11(a) of the South African Income Tax Act, when taxpayers seek a deduction for expenditure incurred whilst busy with a trading activity that generates income, in this case taxable virtual income. The study found that virtual world expenditure will also meet the requirements contained in the general deduction formula and should therefore be allowed as a deduction against income from virtual worlds.

Tax compliance often relies on geographical boundaries to identify key taxing points. These geographical boundaries do not, however, exist in the internet. Virtual worlds and the taxation thereof have received the attention of governments and tax authorities in most of the major developed countries. In the context of the South African tax system, no formal guidelines could be found on how SARS intends to tax virtual world income. Similarly, no research could be found on allowable deductions against this taxable virtual world income.

4.3 CONCLUSION

It is becoming increasingly difficult, if not impossible, to ignore the internet. What started as a communication network and information source for few is becoming commonplace technology for conducting business. The advent of technology which enables the transmission of voice, data, image and video information has been called an information superhighway. This new technology constitutes a brand new route for the exchange of goods and services that has yet to be fully examined.

During the last two years, the world has witnessed a global explosion in virtual worlds involving trade, from entertainment products to professional services. Now, the world, the real world, is anxiously awaiting revenue authorities' response to this global explosion.

In conclusion, if income from virtual worlds form part of the gross income of a South African resident, then surely the expenditure incurred to produce that taxable income should be allowed as a deduction from income if the requirements of section 11(a) of the South African Income Tax Act are met.

Although the intension is to impose a tax on the profits realised from the trade of virtual currency for real world value, in practice, it may be difficult to enforce. Unlike the traditional trade of real property and currency, the virtual market currently is largely unregulated, highly fragmented and notoriously unstable, particularly for the exchange of virtual currencies or goods that are not sanctioned by the appropriate virtual world provider. At any given time, there are hundreds of small-scale third-party websites offering virtual currency and property for sale. These sites quickly open and close in an ever shifting landscape of new names and internet domains, and there is no central clearinghouse where a government agency could easily impose reporting requirements (Zhang *et al.*, 2008:2).

As governments move to regulate virtual worlds and online games, service providers of virtual worlds will need to pay close attention to emerging regulatory requirements. Even though there still is a lot of uncertainty with regards to regulation and enforcement of virtual world income, one thing remains certain and that is that virtual world income will in future be taxed. In the words of Benjamin Franklin – nothing in this world is certain but death and taxes.

4.4 SUMMARY OF CONTRIBUTIONS

The tax issues associated with virtual world income remain largely unresolved. In response to this uncertainty, various governments throughout the world, along with hundreds of private enterprises, are currently analysing a multitude of initiatives that address the complex issues associated with the taxation of virtual worlds. The internet has exploded into a mass-market phenomenon, resulting in many questions and concerns about its possible tax implications.

This study critically evaluated whether expenditure incurred to produce virtual world income will qualify as a tax deduction in the South African tax system. The study found that virtual world expenditure is, in most instances, very similar to real world expenditure and will consequently be a tax deductible expenditure, once all the requirements contained in the said section have been met.

This study added to the current body of knowledge by exploring and evaluating an angle that have not yet been considered in previous research, namely tax deductions against virtual world income. This study can assist SARS when drafting policy and guidelines pertaining to the taxation of virtual world income. The study will also assist taxpayers when completing their tax returns by clarifying the allowable deductions from virtual world income.

Lastly, this study creates an opportunity for academics for future research on the topic.

5 LIST OF REFERENCES

- Camp, B.T. 2007. The Play's the Thing: A Theory of Taxing Virtual Worlds. *Hastings Law Journal*, 59(1):1-66. [Online] Available from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=980693 [Accessed: 2010-04-09].
- Jordaan, K., Koekemoer, A., Stiglingh, M., Van Schalkwyk, L. & Wasserman, M. 2007. *Silke: South African Income Tax*. Durban: LexisNexis Butterworths.
- Lederman, L. 2007. 'Stranger than Fiction': Taxing Virtual Worlds. *New York University Law Review*, 82(6):1620–1672. [Online] Available from: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=969984&rec=1&srcabs=980693 [Accessed: 2010-04-09].
- Marshall, G. 1998. *A Dictionary of Sociology*. 2nd ed. New York: Oxford University.
- Mcloone, S. 2009. IRS May Push for Tax Compliance in Virtual Worlds. *Washington Post*, 8 January. [Online] Available from: <http://voices.washingtonpost.com/small-business/2009/01/html> [Accessed: 2010-04-09].
- Pienaar, S.J. 2008. *South African Income Tax Implications of Income Earned in Virtual Worlds*. Pretoria: University of Pretoria (Unpublished master thesis). [Online] Available from: UPeTD: <http://upetd.up.ac.za/UPeTD.htm> [Accessed: 2010-04-09].
- Sigwadi, M. & Van der Merwe, B.A. 2004. Fat Cat Executive Pay Packages and the General Tax Deduction Formula: Analyses. *SA Mercantile Law Journal*, 16(1):67-77. [Online] Available from: www.unisa.ac.za/contents/faculties/law/docs/SAMercLJ.Index04.pdf [Accessed: 2010-05-21].
- Zhang, B., Tang, D., Tiano, J.R., Gatto, J.G., Duranske, B.T. & Esplin, B. 2008. *China Taxes Real Profits from Virtual World Transactions*. [Online] Available from: <http://www.pillsburylaw.com/siteFiles/Publications> [Accessed: 2010-04-09].

LEGISLATION

Income Tax Act 58 of 1962

COURT CASES

Burgess v CIR 1993(4) SA 161(A)

Caltex Oil (SA) Limited v SIR 1975(1) SA 665(A) (37 SATC 1)

CIR v De Beers Holdings (Pty) Ltd 1986(1) SA 8(A)

CIR v Nemojim (Pty) Ltd 1983(4) SA 935(A)

ITC 1292 (41 SATC 163)

ITC 1385 (46 SATC 111)

ITC 1404 (48 SATC 1)

Port Elizabeth Electric Tramway Co Ltd v CIR 1936 CPD (8 SATC 13)